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CIVILIAN AGENCY ACQUISITION COUNCIL LETTER 2005-05

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM: GERALD ZAFFOS
CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Laws and other requirements applicable to micro-purchases
conducted under section 101 of Public Law 109-62

Section 101(1) of Public Law 109-62 authorized the use of the emergency procurement authorities in 41 U.S.C. 428a(c). Section 101(2), raised the dollar amount of the micro-purchase threshold at 41 U.S.C. 428 to \$250,000. Although section 101(2) raised the micro-purchase threshold for actions in support of Hurricane Katrina rescue and relief efforts to \$250,000, the need for the increased threshold has diminished. Therefore, the threshold for contingency operations for micro-purchases remains at \$15,000, except for exceptional circumstances. If an agency believes that an exceptional circumstance exists, they must contact the Deputy Director for Management at the Office of Management and Budget (OMB). See OMB Memorandum dated October 3, 2005, attachment 1.

The following significant guidance was also issued for Hurricane Katrina rescue and relief efforts:

1. In addition to signing Public Law 109-62, on September 8, 2005, President Bush signed a proclamation that suspends the application of the Davis-Bacon Act to contracts for construction contracts that are entered into on or after September 8, 2005 and are performed in the counties listed in the proclamation. The suspension will stay in effect until the President rescinds the proclamation.
2. On September 9, 2005, the Deputy Assistant Secretary of Labor exercised his authority to grant a limited exception and waiver from some of the requirements of the laws administered by the Office of Federal Contract Compliance Programs (OFCCP). These exceptions apply only to contracts entered into to provide Hurricane Katrina relief and expire three months from the date of the Department of Labor (DOL) memorandum, unless extended as prescribed in the DOL memorandum. The authority to modify the EEO clauses expires December 6, 2005 unless further extended by the Secretary of Labor.

GSA provides the following additional guidance:

1. An acquisition is considered to have a clear and direct relationship to Hurricane Katrina rescue and relief efforts if the commodities will be delivered to, or the services will be performed, either within or immediately adjacent to the counties named in the President's proclamation on Davis-Bacon Act; or the acquisition is being made from a source within a named county for delivery or performance within a named county.
2. Prior to placing an order from a source outside a named county for delivery to or performance at a location that is not within or immediately adjacent to a named county, you must verify from the requiring office that the acquisition is, in fact, in support of Hurricane Katrina rescue and relief efforts. Be sure to document the verification, including the name and title of the person you contacted.
3. As provided for in the DOL letter dated September 9, 2005 (see attachment 2), agencies are authorized to modify the clauses at FAR 52.222-26, Equal Opportunity; 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans; and 52.222-36, Affirmative Action for Workers with Disabilities.
4. As stated in the DOL letter dated September 22, 2005, see attachment 3, agencies are authorized to award contracts for construction in the named counties in excess of \$2,000 without regard to wage determinations issued by the Secretary of Labor under the Davis-Bacon Act. However, other construction related clauses still apply because they are not dependent upon the Secretary of Labor's wage determinations. Clauses that are still applicable are:
 - (a) 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation.
 - (b) 52.222-8, Payrolls and Basic Records.
 - (c) 52.222-9, Apprentices and Trainees.
 - (d) 52.222-10, Compliance with Copeland Act Requirements.
 - (e) 52.222-12, Contract Termination-Debarment.
5. In accordance with section 101(1) of Pub. L. 109-62, the \$10 million threshold in FAR 13.500, Test Program for Certain Commercial Items, paragraph (e) is applicable to procurements in support of Hurricane Katrina rescue and relief efforts.

6. As a result of the increase in the micro-purchase threshold to \$15,000, authorized agency personnel acting in support of Hurricane Katrina rescue and relief efforts may place orders up to \$15,000 without:

(a) Obtaining competition if the price is determined to be fair and reasonable.

(b) Regard to the Buy American Act.

(c) Setting aside purchases below the threshold exclusively for small business concerns.

7. Notwithstanding paragraph 6(c), OMB policy is to ensure that small business concerns are provided maximum practicable opportunity under the circumstances to participate in Federal acquisitions as prime contractors and subcontractors. Also, agency personnel are still required to equitably distribute purchases among qualified suppliers.

8. Although registration in CCR can be waived when utilizing urgent and compelling justifications or when responding to natural disasters (see FAR 4.1102(a) (3)), agencies should strive to have vendors register in CCR as part of receiving an award in excess of the micro-purchase threshold. Further, vendors seeking to do business with the Federal Government should be referred to CCR (www.ccr.gov) for registration.

9. Agencies are authorized to use Part 12 for micro-purchases directly related to Hurricane Katrina rescue and relief efforts. SF 1449, Solicitation/Contract/Order for Commercial Items, may be used to place open market purchases. This form already incorporates by reference the clause at 52.212-4 and indicates that clause 52.212-5 is attached.

10. Under FAR 26.201, which implements the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.), agencies must give preference to organizations, firms and individuals residing in or doing business primarily in the areas affected by Hurricane Katrina.

This CAAC Letter serves as evidence of your consultation with the Chair of the Civilian Agency Acquisition Council as required by FAR 1.404 for class deviations. The class deviations must be within the scope of this memorandum and must be directly related to Hurricane Katrina rescue and relief efforts.

If you require additional information, please contact Mr. Gerald Zaffos, at 202-208-6091, email jerry.zaffos@gsa.gov.